UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CARLTON WHITEHORN, Plaintiff	: :	
v.	:	Case No. 3:03 CV 1240 (CFD)
BRIDGEPORT POLICE DEPARTMENT, CHIEF OF POLICE WILBURT CHAPMAN, OFFICER KING, and OFFICER PARIS, Defendants.	: : : :	

RULING ON DEFENDANTS' MOTION TO DISMISS

The plaintiff, Carlton Whitehorn, lives in Stamford, Connecticut. At the time he filed this action, he was confined at the State of Connecticut Carl Robinson Correctional Institution in Enfield, Connecticut. He brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. The defendants are the City of Bridgeport Police Department, its Chief of Police, and two of its officers. Pending is the defendants' motion to dismiss [Doc. #7]. For the reasons that follow, the motion is denied.

I. Standard of Review

When considering a Rule 12(b) motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Thomas v. City of New York, 143 F.3d 31, 37 (2d Cir. 1998). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. See Tarshis v. Riese Org., 211 F.3d 30, 35 (2d Cir. 2000); Cooper v. Parsky, 140 F.3d 433, 440 (2d Cir. 1998). "The issue is not whether a plaintiff is likely to prevail ultimately, but whether the claimant is entitled to offer evidence to

support the claims." Branham v. Meachum, 77 F.3d 626, 628 (2d Cir. 1996) (quoting Gant v. Wallingford Bd. of Educ., 69 F.3d 669, 673 (2d Cir. 1995) (internal quotations omitted)). In its review of a motion to dismiss, the court may consider "only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings and matters of which judicial notice may be taken." Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993). In reviewing this motion, the court is mindful that the Second Circuit "ordinarily require[s] the district courts to give substantial leeway to pro se litigants." Gomes v. Avco Corp., 964 F.2d 1330, 1335 (2d Cir. 1992).

II. Facts[1]

Whitehorn arrived at the Bridgeport train station on the morning of July 7, 2000. While walking from the train station down Washington Avenue, Whitehorn observed several police cars. At the intersection of Washington Avenue and Pequonock Street, Bridgeport police officers stopped him and accused him of having purchased drugs. However, the officers were unable to find any drugs after a search. An officer then walked up to Whitehorn, holding several plastic bags containing drugs. The officers accused Whitehorn of dropping the drugs on the street. Whitehorn was apparently then arrested for a state drug offense.[2] Whitehorn alleges that he never purchased any drugs or dropped the bags. Although he does not allege the outcome of the criminal charge, he maintains his innocence and the lack of a basis for his arrest.

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[1]The allegations are taken from the plaintiff's complaint.

[2]Whitehorn alleges that a "criminal action" ensued; the Court assumes it was a drug offense based on the arrest of July 7.

Whitehorn alleges that he suffered physical harm and mental stress as a result of his false arrest. He sues the defendants in their individual and official capacities for damages.

III. Discussion

Whitehorn brings this action pursuant to 42 U.S.C. §§ 1981, 1983 and 1988 alleging that the defendants violated his First, Fourth, Sixth, Ninth and Fourteenth Amendment rights when they arrested him. The defendants argue in their motion to dismiss that Whitehorn's § 1983 claims[3] are barred by the statute of limitations because he did not sign his complaint until July 12, 2003, five days after the limitations period expired, and did not file his complaint until July 17, 2003, ten days after the limitations period expired.[4] Whitehorn concedes that the complaint was filed after the expiration of limitations period, but argues the Court should toll the limitations period.

The applicable limitations period in a § 1983 action is determined by the state statutes of limitations. See Owens v. Okure, 488 U.S. 235, 240-41 (1989); Board of Regents v. Tomanio, 446 U.S. 478, 483-84 (1980); Leon v. Murphy, 988 F.2d 303, 310 (2d Cir. 1993). In Connecticut, the general three-year personal injury statute of limitations period set forth in Connecticut General Statutes § 52-577 is the appropriate one for civil rights actions asserting constitutional torts pursuant to 42 U.S.C. § 1983. See Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994); Williams v. Walsh, 558

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[3] The defendants do not address their statute of limitations argument to plaintiff's claims pursuant to 42 U.S.C. §§ 1981 and 1988. Accordingly, the Court only considers the plaintiff's claims pursuant to 42 U.S.C. § 1983 in this ruling.

[4] Plaintiff's complaint was actually filed in the district court on July 17, 2003. However, "a prisoner's complaint is deemed 'filed' on the date the complaint is delivered to prison officials for transmittal to the court," which in this case was July 12, 2003. Covington v. City of New York, 171 F.3d 117, 120 n.1 (2d Cir. 1999).

F.2d 667, 670 (2d Cir. 1977); In re State Police Litigation, 888 F. Supp. 1235, 1248-49 (D. Conn. 1995). In addition, state tolling provisions apply unless they are inconsistent with the policies underlying the relevant federal statute. See Tomanio, 446 U.S. at 484-92.

Although the federal court looks to state law to determine the applicable statute of limitations for claims arising under § 1983, the court looks to federal law to determine when a federal claim accrues. See Eagleston v. Guido, 41 F.3d 865, 871 (2d Cir. 1994), cert. denied, 516 U.S. 808 (1995). In general, a § 1983 claim "accrues when the plaintiff 'knows or has reason to know' of the harm" or injury that is the basis of the action. Id. (quoting Cullen v. Margiotta, 811 F.2d 698, 725 (2d Cir.), cert. denied, 483 U.S. 1021 (1987)).

The Second Circuit has stated that in some circumstances, a § 1983 claim for false arrest does not accrue until the resulting criminal proceeding has terminated. See Woods v. Candela, 47 F.3d 545, 546 (2d Cir. 1995). In Covington v. City of New York, 171 F.3d 117, 119 (2d Cir. 1999), the Second Circuit held that the determination of the accrual date for a false arrest claim depends on "whether a judgment in [a plaintiff's] favor on the false arrest claim would have undermined the validity of any potential conviction in the criminal proceedings against [him/her]."[5] Thus, "where the only evidence for conviction was obtained pursuant to an arrest, recovery in a civil case based on false arrest would necessarily impugn any conviction resulting from the use of that evidence." Id. at 123. In that situation, a cause of action for false arrest does not accrue until the prosecution is terminated. Id. If, however, other independent evidence not related to the claimed false arrest supported the

[5]This conclusion in Covington was based on the Second Circuit's application of Heck v. Humphrey, 512 U.S. 477 (1994).

conviction, a successful result in a section 1983 false arrest action would not necessarily invalidate the conviction and the cause of action for the false arrest claim would accrue at the time of the arrest. See id.

In Covington, the Second Circuit was unable to determine from the record whether the validity of a possible conviction of the plaintiff would be affected by recovery on the false arrest claim.[6] Id. The court remanded the case to enable the district court to determine when the plaintiff's cause of action for false arrest accrued. Id.

Covington was based on an application of New York state law to the elements of a § 1983 false arrest claim. New York law does not require that the criminal prosecution be resolved in the plaintiff's favor as an element of a claim for false arrest. However, the Second Circuit held in Roesch v. Otarola, 980 F.2d 850 (2d Cir. 1992), that this element is part of a false arrest claim under Connecticut law and thus is imported into a § 1983 false arrest claim in this District. As a result, the accrual of a cause of action in the District of Connecticut for false arrest under § 1983 occurs only when this element is also satisfied. But see Weyant v. Okst, 101 F.3d 845, 853 (2d Cir. 1996) (pointing out that whether favorable termination of the criminal proceedings is an element of a § 1983 false arrest claim in Connecticut is not "clearly settled").

Based on the allegations in the complaint here, the Court cannot determine that recovery on a claim of false arrest would not impugn a possible conviction on Whitehorn's drug charge. In addition, because termination of the criminal proceedings in Whitehorn's favor is an element of the false arrest

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[6]The district court had converted the defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6) to a motion for summary judgment and granted the motion. Id. at 120-21.

claim, Whitehorn's false arrest cause of action did not begin to accrue until the date of the resolution of his criminal charge. Accordingly, in the context of resolving a motion to dismiss based only on these allegations, the Court cannot conclude that Whitehorn's cause of action for false arrest accrued as early as on July 7, 2000.[7]

IV. Conclusion

For the foregoing reasons, Defendants' Motion to Dismiss [Doc. #7] is DENIED.

SO ORDERED this 8th day of July 2004, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

[7]As a result, the Court does not address Whitehorn's tolling argument.